

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2016-01737 (Patent 8,880,862)
Case IPR2016-01738 (Patent 8,880,862)
Case IPR2016-01739 (Patent 8,880,862)¹

Before DEBRA STEPHENS, GEORGIANNA W. BRADEN, and
JASON J. CHUNG, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ The Order concerns a matter applicable to all proceedings. We exercise our discretion to file a single Order in the cases. The parties, however, are not authorized to use this caption.

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On October 13, 2017, the Board requested a conference call with the parties to discuss what impact, if any, the Federal Circuit's *en banc* decision in *Aqua Prods., Inc. v. Matal*, No. 2015-1177 (Fed. Cir. Oct. 4, 2017) would have with regards to (1) Patent Owner's pending Motions to Amend in IPR2016-01737 and IPR2016-01738 and (2) the current scheduling order in place in each proceeding. On the call were counsel for both parties as well as Judges Braden, Stephens, and Chung.

During the call, the parties indicated their understanding that the Federal Circuit's decision removed the burden of persuasion from Patent Owner. Accordingly, Petitioner requested to file a new brief challenging the patentability of Patent Owner's proposed amended claims and suggested that the panel expunge all prior briefing related to the proposed amended claims. Patent Owner agreed to Petitioner submitting a supplemental brief with the understanding that Patent Owner would have the opportunity to file an opposition of equal length, but opposed expunging prior briefs. The panel agreed with the parties requests to file briefs and thus, authorized additional briefing. The panel requested that the parties submit an agreed proposed briefing schedule and a new date for an oral argument should one be requested.

The parties could not agree on a briefing schedule, specifically the due date for Petitioner's opening supplemental brief, and could not agree on a new date for oral arguments. Therefore, the panel convened an additional conference call on October 19, 2017, to discuss the parties' proposed briefing schedule. Based on arguments from the parties, the panel indicated that Petitioner's Opening Supplemental Brief would be due no later than Nov. 10, 2017 and oral arguments would be held on Jan. 8, 2018. The parties then conferred and submitted an agreed

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schedule on Oct. 23, 2017. Based on timing requirements for the panel, the following schedule is entered for the above captioned cases:

Event	Due Date
Petitioner's Opening Supplemental Brief (limited to 12 pages)	Nov. 10, 2017
Patent Owner's Opposition to Petitioner's Opening Supplemental Brief (limited to 12 pages)	Dec 4, 2017
Request for oral argument	Dec. 8, 2017
Petitioner's Reply to Patent Owner's Opposition (limited to 5 pages)	Dec. 18, 2017
DUE DATE 4: Motion for observation regarding cross-examination of reply witness, Motion to exclude evidence	Dec. 22, 2017 (unless Apple submits a further declaration in support of its Reply)
DUE DATE 5: Response to observation and Opposition to motion to exclude	Dec. 29, 2017
DUE DATE 6: Reply to opposition to motion to exclude	Jan. 4, 2018
DUE DATE 7: Oral argument (if requested)	Jan. 8, 2018

Except as indicated below, filing requirements and page limits for all submissions are dictated by 37 C.F.R. §§ 42.6 and 42.24. The parties may stipulate to different dates for the above-listed events; however, the parties may not modify the due date for Petitioner's Opening Supplemental Brief, the date for requesting oral argument, DUE DATE 6, or the date of the oral argument.

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Accordingly, in consideration of the preceding, it is:

ORDERED that Petitioner is authorized to file an Opening Supplemental Brief addressing Patent Owner's proposed amended claims, such brief shall be filed no later than 6pm ET on November 10, 2017, and shall be limited to twelve (12) pages;

FURTHER ORDERED that Patent Owner is authorized to file an Opposition to Petitioner's Opening Supplemental Brief List, such brief shall be filed no later than 6pm ET on December 4, 2017, and shall be limited to twelve (12) pages;

FURTHER ORDERED that Petitioner is authorized to file a Reply to Patent Owner's Opposition, such brief shall be filed no later than 6pm ET on December 18, 2017, and shall be limited to five (5) pages;

FURTHER ORDERED that, if requested by at least one party, oral argument in IPR2016-01737, IPR2016-01738, and IPR2016-01739 shall be held on January 8, 2018; and

FURTHER ORDERED that the parties may stipulate to different dates for the above-listed events; however, the parties may not modify the due date for Petitioner's Opening Supplemental Brief, the date for requesting oral argument, DUE DATE 6, or the date of the oral argument.

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